

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

SPENCER NEAL,

Plaintiff,

vs.

TJM COLUMBUS, LLC,

Defendant.

CASE NO.: _____

JUDGE _____

**COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES:**

1ST CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of the Americans with Disability
Act of 1990 ("Title III" and "ADA"),
42 U.S.C. §§ 12181 *et seq.*

2ND CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Revised Code 4112.02, *et
seq.*

3RD CAUSE OF ACTION: For Denial of
Access by a Public Accommodation in
Violation of Ohio Administrative Code
4101:1-11, *et seq.*

Plaintiff SPENCER NEAL Complains of Defendant TJM COLUMBUS, LLC, doing
business as Crowne Plaza Columbus North, and alleges as follows:

INTRODUCTION:

1. This is a civil rights action for discrimination against persons with physical
disabilities, of which plaintiff is a member of, for failure to remove architectural barriers
structural in nature at Defendant's property, a place of public accommodation, thereby
discriminatorily denying plaintiff access to, the full and equal enjoyment of, opportunity to
participate in, and benefit from, the goods, facilities, services, and accommodations thereof.
Plaintiff seeks injunctive relief and damages pursuant to the Americans with Disability Act of
1990 ("title III" AND "ADA"), 42. U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et*

1 *seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.*

2 2. Plaintiff SPENCER NEAL is a person with physical disabilities who, on or about
3 March 25, 2019 through March 26, 2019, was an invitee, guest, patron, or customer at
4 Defendant's property, which houses a CROWNE PLAZA hotel, located at 6500 Doubletree
5 Avenue, Columbus, Ohio 43229. At said time and place, Defendant failed to provide proper legal
6 access to the property, which is a public accommodation and/or public facility. The denial of
7 access was in violation of both federal and Ohio legal requirements, and NEAL suffered
8 violations of his civil rights to full and equal access and was embarrassed and humiliated.
9

10 **JURISDICTION AND VENUE:**
11

12 3. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
13 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
14 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same
15 nucleus of operative facts and arising out of the same transactions, are also brought under
16 parallel Ohio law, whose goals are closely tied with the ADA, including but not limited to
17 violations of Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11,
18 *et sec.*
19

20 4. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is
21 founded on the facts that the real property which is the subject of this action is located in this
22 district, in the City of Columbus, County of Franklin, State of Ohio and that plaintiffs' causes of
23 action arose in this district.
24

25 **PARTIES:**

26 5. Plaintiff SPENCER NEAL is a "physically handicapped person," a "physically
27 disabled person," and a "person with physical disabilities." (Hereinafter the terms "physically
28

1 disabled,” “physically handicapped” and “person with physical disabilities” are used
2 interchangeably, as these words have similar or identical common usage and legal meaning.)
3 NEAL is a “person with physical disabilities,” as defined by all applicable Ohio and United
4 States laws. NEAL requires the use of a wheelchair to travel about in public. Consequently,
5 NEAL is a member of that portion of the public whose rights are protected by the provisions of
6 Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.*

8 6. Defendant TJM COLUMBUS, LLC, an Ohio Limited Liability Company, is the
9 owner and operator, lessor and/or lessee, or agent of the owner, lessor and/or lessee, of the
10 building and/or buildings which constitute a public facility in and of itself, occupied by the
11 CROWNE PLAZA hotel, a public accommodation, located at/near 6500 Doubletree Avenue,
12 Columbus, Ohio 43229, and subject to the requirements of Ohio state law requiring full and
13 equal access to public facilities pursuant to Ohio Revised Code § 4112.02, *et seq.*, Ohio
14 Administrative Code § 4101:1-11, *et sec.*, and subject to the Americans with Disability Act of
15 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, and to all other legal
16 requirements referred to in this complaint.

19 7. At all times relevant to this complaint, Defendant is the lessee, or agent of the
20 lessee, and/or lessor, of said premises, and owns and operates the subject CROWNE PLAZA
21 hotel as a public facility at/near 6500 Doubletree Avenue, Columbus, Ohio 43229. The business,
22 a CROWNE PLAZA hotel, is open to the general public and conducts business therein. The
23 business operating on said premises is a public accommodation subject to the requirements of
24 Ohio Revised Code § 4112.02, *et seq.* and Ohio Administrative Code § 4101:1-11, *et sec.*

26 8. At all times relevant to this complaint, Defendant is the landlords/lessors,
27 tenants/lessees and the owners and operators of the subject hotel, a public accommodation

1 located at/near 6500 Doubletree Avenue, Columbus, Ohio 43229. As such, Defendant is jointly
2 and severally responsible to identify and remove architectural barriers pursuant to Code of
3 Federal Regulations section 36.201(b), which states in pertinent part:

4
5 **§ 36.201 General**

6 (b) Landlord and tenant responsibilities. Both the landlord
7 who owns the building that houses a place of public
8 accommodation and the tenant who owns or operates the place of
9 public accommodation are public accommodations subject to the
10 requirements of this part. As between the parties, allocation of
11 responsibility for complying with the obligations of this part may
12 be determined by lease or other contract.

13 CFR §36.201(b)

14 9. Plaintiff does not know the true names of Defendant, its business capacities, its
15 ownership connection to the property and business, nor their relative responsibilities in causing
16 the access violations herein complained of. Plaintiff is informed and believes that the Defendant
17 herein is a public accommodation, and is the agent, ostensible agent, master, servant, employer,
18 employee, representative, franchisor, franchisee, partner, and associate, or such similar capacity,
19 of each of the other defendants, if any, and was at all times acting and performing, or failing to
20 act or perform, within the course and scope of his, her or its authority as agent, ostensible agent,
21 master, servant, employer, employee, representative, franchiser, franchisee, partner, and
22 associate, or such similar capacity, and with the authorization, consent, permission or ratification
23 of each of the other defendants, and is responsible in some manner for the acts and omissions of
24 the other defendants in legally causing the violations and damages complained of herein, and
25 have approved or ratified each of the acts or omissions of each other defendant, as herein
26 described.

PRELIMINARY FACTUAL ALLEGATIONS:

10. Defendant is the entity that is a public accommodation that owns, leases (or leases to), or operates a, CROWNE PLAZA hotel, located at 6500 Doubletree Avenue, Columbus, Ohio 43229. CROWNE PLAZA hotel and each of its facilities are places “of public accommodation” subject to the requirements of the Americans with Disability Act of 1990 (“TITLE III” AND “ADA”), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code § 4101:1-11, *et sec.* On information and belief, said facility has undergone “alterations, structural repairs and additions,” each of which has subjected the CROWNE PLAZA hotel to handicapped access requirements.

11. Plaintiff SPENCER NEAL is a person with a disability. NEAL is a “physically disabled person,” as defined by all applicable Ohio and United States laws. NEAL is paralyzed as a result of spina bifida and requires the use of a wheelchair for mobility and to travel in public.

12. At all times referred to herein and continuing to the present time, Defendant advertised, publicized and held out the CROWNE PLAZA hotel as being handicapped accessible and handicapped usable.

13. On or about March 25, 2019 through March 26, 2019, NEAL was an invitee and guest at the subject CROWNE PLAZA hotel, arriving for purposes of obtaining lodging.

14. Upon his arrival, during his patronizing of the public accommodation, and upon his exit of the facility, NEAL personally encountered architectural barriers which denied him the full and equal access to the property.

15. Therefore, at said time and place, NEAL, who is a person with disabilities, encountered the following inaccessible elements of the subject CROWNE PLAZA hotel which constituted architectural barriers and a denial of the proper and legally required access to a public

1 accommodation to persons with physical disabilities. By way of *example*, and not as an
2 exhaustive inventory of Defendant's violations, the following barriers to access were personally
3 encountered by plaintiffs:

- 4 A. In the parking south, there are not enough accessible stalls in violation of 2010 ADAS
5 Section: 208.2 and 1991 ADAS Section: 4.1.2(5)(a).
- 6 B. In the parking north, there are not enough accessible stalls in violation of 2010 ADAS
7 Section: 208.2 and 1991 ADAS Section: 4.1.2(5)(a).
- 8 C. In the parking north, the access aisle is missing at the 2 accessible parking stalls in
9 violation of 2010 ADAS Section: 502.2 and 1991 ADAS Section: 4.1.2(1).
- 10 D. In the parking north, the parking signs are mounted too low in violation of 2010 ADAS
11 Section: 502.6.
- 12 E. In the parking north, the accessible parking stall's access aisle contains a built up curb
13 ramp which results in significant slopes greater than 2 percent in violation of 2010 ADAS
14 Section: 502.4 and 1991 ADAS Section: 4.6.3.
- 15 F. At the exterior accessible route, the route of travel at this location does not provide the
16 required minimum width in violation of 2010 ADAS Section: 403.5.1 and 1991 ADAS
17 Section: 4.2.1.
- 18 G. At the exterior accessible route, the building entrance by the restaurant is not located on
19 an accessible route in violation of 2010 ADAS Section: 206.2.1 and 1991 ADAS Section:
20 4.1.2(1).
- 21 H. At the exterior accessible route, the curb ramp is not wide enough in violation of 2010
22 ADAS Section: 405.5, 406.1.
- 23 I. In the lobby, the doormats are not secured in place at the entry door and throughout the
24 lobby in violation of 2010 ADAS Section: 302.2 and 1991 ADAS Section: 4.5.3.
- 25 J. In the lobby, the lowered portions of the sales and service counter is not a minimum 36
26 inches wide due to obstructions in violation of 2010 ADAS Section: 904.4.
- 27 K. In the lobby, the counter seating is not 60 inches in length in violation of 1991 ADAS
28 Section: 5.2.
- L. In room 155, the sign providing directional and information is noncompliant in violation
of 2010 ADAS Section: 216.3.

- 1 M. In room 155, the water and drain pipes under the lavatory are not adequately insulated in
2 violation of 2010 ADAS Section: 606.5 and 1991 ADAS Section: 4.19.4.
- 3 N. In room 155, the floor drain is set too low in the floor which causes a slope over 2 percent
4 in violation of 2010 ADAS Section: 303.3, 304.2, 304.2 Exception.
- 5 O. In room 155, the restroom does not provide for a turning space within the restroom in
6 violation of 2010 ADAS Section: 603.2.1 and 1991 ADAS Section: 4.22.3.
- 7 P. In room 155, the side grab bar is obstructed by the vertical grab bar in violation of 2010
8 ADAS Section: 609.3.
- 9 Q. In room 155, the side grab bar is too high in violation of 2010 ADAS Section: 609.4 and
10 1991 ADAS Section: 4.17.6.
- 11 R. In room 155, the toilet is not located within the range allowed from the side wall or
12 partition in violation of 2010 ADAS Section: 604.2.
- 13 S. In room 155, the rear grab bar is too high in violation of 2010 ADAS Section: 609.4 and
14 1991 ADAS Section: 4.17.6.
- 15 T. In room 155, the toilet paper is not installed within the compliant range in violation of
16 2010 ADAS Section: 604.7.
- 17 U. In room 155, the required 56 inches by 60 inches clear floor space for the water closet has
18 been obstructed by the trash can in violation of 2010 ADAS Section: 604.3.1 and 1991
19 ADAS Section: 4.16.2.
- 20 V. In room 155, the clearance in front of the shower is not compliant in violation of 2010
21 ADAS Section: 608.2.2.1 and 1991 ADAS Section: 4.21.2.
- 22 W. In room 155, the soap dish is out of reach range because the depth of the reach from the
23 shower seat is greater than 25 inches in violation of 2010 ADAS Section: 308.2.2 and
24 1991 ADAS Section: 4.2.5.
- 25 X. In room 155, the coat hook is installed greater than 48 inches above the finished floor in
26 violation of 2010 ADAS Section: 308.2.1 and 1991 ADAS Section: 4.2.5.
- 27 Y. In room 155, the route of travel at this location does not provide a minimum width of 36
28 inches in violation of 2010 ADAS Section: 403.5.1 and 1991 ADAS Section: 4.3.3.
- Z. In room 155, the drape pulls are too high and out of the maximum reach range for a side
approach in violation of 2010 ADAS Section: 308.3.1.
- AA. In room 155, the patio door safety latch is too high and out of the maximum reach
range for a side approach in violation of 2010 ADAS Section: 308.3.1.

1 BB. In room 155, the floor lamp switch is too high and out of the maximum reach
2 range for a side approach in violation of 2010 ADAS Section: 308.3.1.

3 CC. In room 155, the climate controls are not accessible because there is not adequate
4 clear floor space for an approach in violation of 2010 ADAS Section: 305.3 and 1991
5 ADAS Section: 4.2.4.1.

6 DD. In room 155, the door threshold at the patio is non-compliant in violation of 2010
7 ADAS Section: 303.3.

8 EE. In room 155, the patio door opening does not provide at least 32 inches between the face
9 of the door and the opposite stop in violation of 2010 ADAS Section: 404.2.3 and 1991
10 ADAS Section: 4.13.5.

11 FF. In room 155, there is no accessible route to the patio. The change in level exceeds 0.25"
12 in violation of 2010 ADAS Section: 206.2.2 and 1991 ADAS Section: 4.1.2(1).

13 GG. In room 155, the closet shelf and iron are too high and out of the maximum reach
14 range for a side approach in violation of 2010 ADAS Section: 308.3.1.

15 HH. In other guest rooms, there may not be enough accessible rooms designed with
16 mobility features. A Rule 34 inspection is required to check for compliance with the
17 ADA standards in violation of 2010 ADAS Section: 224.2 and 1991 ADAS Section:
18 9.1.2.

19 II. In other guest rooms, accessible guest rooms may not be dispersed among the various
20 classes of sleeping accommodations. A rule 34 inspection is required to check for
21 compliance with the ADA standards in violation of 2010 ADAS Section: 224.5 and 1991
22 ADAS Section: 9.1.4.

23 JJ. In the mens' public restroom, a compliant room identification sign is missing on the
24 strike side of the door in violation of 2010 ADAS Section: 216.2 and 1991 ADAS
25 Section: 4.30.6.

26 KK. In the men's public restroom, the restroom is missing the International Symbol of
27 Accessibility (ISA) in violation of 2010 ADAS Section: 216.8 and 1991 ADAS Section:
28 4.1.3(1).

LL. In the men's public restroom, the door opening contains projections into the required
clear space in violation of 2010 ADAS Section: 404.2.3.

MM. In the men's public restroom, the maneuvering space on the pull side of the door
does not adequately extend beyond the latch side of the door in violation of 2010 ADAS
Section: 404.2.4.1 and 1991 ADAS Section: 4.13.6.

1 NN. In the men's public restroom, the water and drain pipes under the lavatory are not
2 adequately insulated in violation of 2010 ADAS Section: 606.5 and 1991 ADAS Section:
3 4.19.4.

4 OO. In the men's public restroom, the toilet seat cover dispenser is mounted too high
5 in violation of 2010 ADAS Section: 308.1.

6 PP. In the men's public restroom, the paper towel dispenser's operation mechanism is too
7 high off the floor in violation of 2010 ADAS Section: 308.2.1.

8 QQ. In the men's public restroom, the toilet seat is not located within the range
9 allowed off the floor in violation of 2010 ADAS Section: 604.4 and 1991 ADAS Section:
10 4.16.3.

11 RR. In the men's public restroom, the toilet paper is not installed within the compliant
12 range in violation of 2010 ADAS Section: 604.7.

13 SS. In the men's public restroom, the mirror is mounted too high in violation of 2010 ADAS
14 Section: 603.3.

15 TT. In the fitness area, the stretch bands are not accessible because there is not adequate clear
16 floor space for an approach in violation of 2010 ADAS Section: 305.3 and 1991 ADAS
17 Section: 4.2.4.1.

18 UU. In the fitness area, the water cooler is not accessible because there is not adequate
19 clear floor space for an approach in violation of 2010 ADAS Section: 305.3 and 1991
20 ADAS Section: 4.2.4.1.

21 VV. In the fitness area, the clear floor space only allows for a forward approach and
22 the stretch bands out of reach range in violation of 2010 ADAS Section: 308.2.2 and
23 1991 ADAS Section: 4.2.5.

24 WW. In the fitness area, a portion of the medicine balls are too high and out of the
25 maximum reach range for a side approach in violation of 2010 ADAS Section: 308.3.1.

26 XX. In the fitness area, the telephone is not accessible because there is not adequate
27 clear floor space for an approach in violation of 2010 ADAS Section: 305.3 and 1991
28 ADAS Section: 4.2.4.1.

YY. In the fitness area, the coat hooks are not accessible because there is not adequate
clear floor space for an approach in violation of 2010 ADAS Section: 305.3 and 1991
ADAS Section: 4.2.4.1.

ZZ. At the swimming pool area, at the time of the evaluation the lift had a protective cover on
it and was not accessible without assistance in violation of 2010 ADAS Section: 242.2.

1
2 On personal knowledge, information and belief, other public facilities and elements too
3 numerous to list were improperly inaccessible for use by persons with physical disabilities.

4 16. At all times stated herein, the existence of architectural barriers at Defendant's
5 place of public accommodation evidenced "actual notice" of Defendant's intent not to comply
6 with the Americans with Disability Act of 1990 ("title III" and "ADA"), 42. U.S.C. §§ 12181 *et*
7 *seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §4101:1-11, *et sec.*
8
9 either then, now or in the future.

10 17. As a legal result of Defendant's failure to act as a reasonable and prudent public
11 accommodation in identifying, removing or creating architectural barriers, policies, practices and
12 procedures that denied access to plaintiff and other persons with disabilities, plaintiffs suffered
13 damages as alleged herein.
14

15 18. As a further legal result of the actions and failure to act of Defendant, and as a
16 legal result of the failure to provide proper handicapped-accessible public facilities as set forth
17 herein, NEAL was denied his civil rights to full and equal access to public facilities. NEAL
18 suffered a loss of his civil rights and his rights as a person with physical disabilities to full and
19 equal access to public facilities, and further suffered from injury, shame, humiliation,
20 embarrassment, anger, chagrin, disappointment and worry, expectedly and naturally associated
21 with a person with physical disabilities being denied access, all to their damages as prayed
22 hereinafter in an amount within the jurisdiction of this court.
23

24 19. On information and belief, construction alterations carried out by Defendant have
25 triggered access requirements under Americans with Disability Act of 1990 ("TITLE III" AND
26 "ADA"), 42. U.S.C. §§ 12181 *et seq.*, Ohio Revised Code § 4112.02, *et seq.*; and Ohio
27
28 Administrative Code §4101:1-11, *et sec.*

1 20. NEAL, as described herein below, seeks injunctive relief to require the CROWNE
2 PLAZA hotel to be made accessible to meet the requirements of both Ohio law and the
3 Americans with Disabilities Act, whichever is more restrictive, so long as Defendant operates
4 and/or leases the CROWNE PLAZA hotel as a public facility. Plaintiff seeks damages for
5 violation of his civil rights, from the date of his visit until such date as Defendant brings the
6 establishment into full compliance with the requirements of Ohio and federal law.
7

8 21. On information and belief, Defendant has been negligent in its affirmative duty
9 to identify the architectural barriers complained of herein and negligent in the removal of some
10 or all of said barriers.
11

12 22. Because of Defendant's violations, NEAL and other persons with physical
13 disabilities are unable to use public facilities such as those owned and operated by Defendant on
14 a "full and equal" basis unless such facility is in compliance with the provisions of the
15 Americans with Disabilities Act and other accessibility law as plead herein. Plaintiff seeks an
16 order from this court compelling Defendant to make the CROWNE PLAZA hotel accessible to
17 persons with disabilities.
18

19 23. On information and belief, Defendant has undertaken to modify and alter existing
20 building(s), and has failed to make them comply with accessibility requirements. The acts and
21 omissions of Defendant in failing to provide the required accessible public facilities at the time
22 of plaintiff's visit and injuries, indicate actual and implied malice towards plaintiff, and
23 despicable conduct carried out by Defendant with a willful and conscious disregard for the rights
24 and safety of plaintiff and other similarly situated persons, and justify punitive damages pursuant
25 to Ohio Revised Code § 2315.21, in amounts sufficient to make a more profound example of
26 Defendant to other operators of other establishment and other public facilities, and to punish
27
28

1 Defendant and to carry out the purposes of § 2315.21.

2 24. Plaintiff is informed and believes and therefore alleges that Defendant caused the
3 subject property to be constructed, altered and/or maintained in such a manner that persons with
4 physical disabilities were denied full and equal access to, within and throughout said facility of
5 the CROWNE PLAZA hotel and were denied full and equal use of said public facility. Further,
6 on information and belief, Defendant has continued to maintain and operate said facility in such
7 conditions up to the present time, despite actual and constructive notice to such Defendant that
8 the configuration of the establishment and/or its building(s) are in violation of the civil rights of
9 persons with physical disabilities, such as plaintiff and the disability community. Such
10 construction, modification, ownership, operation, maintenance and practices of such public
11 facilities are in violation of law as stated in Americans with Disability Act of 1990 (“TITLE III”
12 AND “ADA”), 42. U.S.C. §§ 12181 *et seq.* and elsewhere in the laws of Ohio.
13

14 25. On information and belief, the subject public facility of the CROWNE PLAZA hotel
15 denied full and equal access to plaintiff and other persons with physical disabilities in other
16 respects due to noncompliance with requirements of Ohio Revised Code § 4112.02, *et seq.*; and
17 Ohio Administrative Code §4101:1-11, *et sec.*
18

19 26. On personal knowledge, information and belief, the basis of Defendant’s actual
20 and constructive notice that the physical configuration of the facilities including, but not limited
21 to, architectural barriers constituting the CROWNE PLAZA hotel was in violation of the civil
22 rights of persons with physical disabilities, such as plaintiff, includes, but is not limited to,
23 communications with invitees and guests, owners of other establishments and businesses, notices
24 Defendant obtained from governmental agencies upon modification, improvement, or substantial
25 repair of the subject premises and other properties owned by the Defendant, newspaper articles
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27
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1 and trade publications regarding the Americans with Disabilities Act and other access laws,
2 public service announcements, and other similar information. Defendant's failure, under state
3 and federal law, to make the establishment accessible is further evidence of Defendant's
4 conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities.
5 The scope and means of the knowledge of Defendant are within Defendant's exclusive control
6 and cannot be ascertained except through discovery. Despite being informed of such effect on
7 plaintiff and other persons with physical disabilities due to the lack of accessible facilities,
8 Defendant knowingly and willfully refused to take any steps to rectify the situation and to
9 provide full and equal access for plaintiffs and other persons with physical disabilities to the
10 establishment. Said Defendant has continued such practices, in conscious disregard for the rights
11 of plaintiff and other persons with physical disabilities, up to the date of filing of this complaint,
12 and continuing thereon. Said conduct, with knowledge of the effect it was and is having on
13 plaintiff and other persons with physical disabilities, constitutes despicable conduct in conscious
14 disregard of the rights and safety of plaintiffs and of other similarly situated persons, justifying
15 the imposition of punitive damages pursuant to Ohio law.

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17
18
19 27. Plaintiff will return to the subject CROWNE PLAZA hotel to patronize the
20 hotel in October 2020, if the hotel is made fully accessible to a disabled person in a wheelchair,
21 and to also avail himself of the hotel's services.

22
23 28. Furthermore, plaintiff intends to return to the CROWNE PLAZA hotel as an ADA
24 tester in October 2020 and on an annual basis thereafter, to ascertain whether Defendant
25 removed the barriers to access which are the subject of this litigation.

26 **I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC**
27 **ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
28 **DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)**

1 29. Plaintiff pleads and incorporates by reference, as if fully set forth again herein,
2 the allegations contained in paragraphs 1 through 28 of this complaint.

3 30. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C.
4 §12101 regarding persons with physical disabilities, finding that laws were needed to more fully
5 protect:
6

7 some 43 million Americans with one or more physical or mental
8 disabilities; [that] historically society has tended to isolate and
9 segregate individuals with disabilities; [that] such forms of
10 discrimination against individuals with disabilities continue to be a
11 serious and pervasive social problem; [that] the nation's proper
12 goals regarding individuals with disabilities are to assure equality
13 of opportunity, full participation, independent living and economic
14 self-sufficiency for such individuals; [and that] the continuing
existence of unfair and unnecessary discrimination and prejudice
denies people with disabilities the opportunity to compete on an
equal basis and to pursue those opportunities for which our free
society is justifiably famous.

15 31. Congress stated as its purpose in passing the Americans with Disabilities Act of
16 1990 (42 U.S.C. §12102):

17 It is the purpose of this act (1) to provide a clear and
18 comprehensive national mandate for the elimination of
19 discrimination against individuals with disabilities; (2) to provide
20 clear, strong, consistent, enforceable standards addressing
21 discrimination against individuals with disabilities; (3) to ensure
22 that the Federal government plays a central role in enforcing the
23 standards established in this act on behalf of individuals with
24 disabilities; and (4) to invoke the sweep of Congressional
authority, including the power to enforce the 14th Amendment and
to regulate commerce, in order to address the major areas of
discrimination faced day to day by people with disabilities.

25 32. As part of the Americans with Disabilities Act of 1990, (hereinafter the "ADA"),
26 Congress passed "Title III - Public Accommodations and Services Operated by Private Entities"
27 (Section 301 42 U.S.C. §12181, *et seq.*). Among the public accommodations identified for
28 purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private entities are considered public accommodations for purposes of this title, if the operations of such entities affect commerce -

...

(A) an inn, hotel, motel, or other place of lodging ***;

42 U.S.C. §12181(7)(A).

33. Pursuant to §302, 42 U.S.C. §12182, “No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of any place of public accommodation by any person who owns, leases, or leases to, or operates a place of public accommodation.”

34. The specific prohibitions against discrimination set forth in §302(b)(2)(a), 42 U.S.C. §12182(b)(2)(a) are:

(i) the imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations, unless such criteria can be shown to be necessary for the provision of the goods, services, facilities, privileges, advantages, or accommodations being offered;

(ii) a failure to make reasonable modifications in policies, practices, or procedures, when such modifications are necessary to afford such goods, services, facilities, privileges, advantages or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter the nature of such goods, services, facilities, privileges, advantages, or accommodations;

(iii) a failure to take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden;

(iv) a failure to remove architectural barriers, and

1 communication barriers that are structural in nature, in existing
2 facilities . . . where such removal is readily achievable; and

3 (v) where an entity can demonstrate that the removal of
4 a barrier under clause (iv) is not readily achievable, a failure to
5 make such goods, services, facilities, privileges, advantages or
6 accommodations available through alternative methods if such
7 methods are readily achievable.

8 The acts of Defendant set forth herein were a violation of plaintiff's rights under the ADA, 42.

9 U.S.C. §§ 12181 *et seq.*; Ohio Revised Code § 4112.02, *et seq.*; and Ohio Administrative Code §
10 4101:1-11, *et sec.*, making available damage remedies.

11 35. The removal of the barriers complained of by plaintiff as hereinabove alleged
12 was at all times after January 26, 1992 "readily achievable" as to the subject CROWNE PLAZA
13 hotel pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if the removal of
14 all the barriers complained of herein together was not "readily achievable," the removal of each
15 individual barrier complained of herein was "readily achievable." On information and belief,
16 Defendant's failure to remove said barriers was likewise due to discriminatory practices,
17 procedures and eligibility criteria, as defined by §302(b)(2)(a)(i)-(iii); 42 U.S.C. §12182
18 (b)(2)(A)(i).

19 36. Per §301(9), 42 U.S.C. §12181 (9), the term "readily achievable" means "easily
20 accomplishable and able to be carried out without much difficulty or expense." The statute
21 defines relative "expense" in part in relation to the total financial resources of the entities
22 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
23 plaintiff complains of herein were and are "readily achievable" by the Defendant under the
24 standards set forth under §301(9) of the Americans with Disabilities Act. Further, if it was not
25 "readily achievable" for Defendant to remove each of such barriers, Defendant has failed to
26 make the required services available through alternative methods which were readily achievable.
27
28

1 37. On information and belief, construction work on, and modifications of, the
2 subject CROWNE PLAZA hotel occurred after the compliance date for the Americans with
3 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III
4 of the ADA.
5

6 38. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
7 *seq.*, §308, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil
8 Rights Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on
9 the basis of disability in violation of this title or has reasonable grounds for believing that he
10 is about to be subjected to discrimination in violation of §302. Plaintiff cannot return to or make
11 use of the public facilities complained of herein so long as the premises and Defendant's policies
12 bar full and equal use by persons with physical disabilities.
13

14 39. Per §308(a)(1) (42 U.S.C. 12188), "Nothing in this section shall require a person
15 with a disability to engage in a futile gesture if such person has actual notice that a person or
16 organization covered by this title does not intend to comply with its provisions." Pursuant to this
17 last section, Plaintiff has not returned to Defendant's premises since on or about March 25, 2019
18 through March 26, 2019, but alleges that Defendant has continued to violate the law and deny the
19 rights of plaintiff and of other persons with physical disabilities to access this public
20 accommodation. Pursuant to §308(a)(2), "In cases of violations of §302(b)(2)(A)(iv) . . .
21 injunctive relief shall include an order to alter facilities to make such facilities readily accessible
22 to and usable by individuals with disabilities to the extent required by this title."
23
24

25 40. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
26 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
27 the Americans with Disabilities Act of 1990, including but not limited to an order granting
28

1 injunctive relief and attorneys' fees. Plaintiff will seek attorneys' fees conditioned upon being
2 deemed to be the prevailing party.

3 41. Plaintiff seeks damages pursuant to Ohio Revised Code § 4112.02, *et seq.* and Ohio
4 Administrative Code § 4101:1-11, *et sec.*, which provide, within the statutory scheme, that a
5 violation of the ADA and/or Ohio's accessibility standards is a violation of Ohio law.
6

7 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

8 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
9 **IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.***

10 42. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
11 the allegations contained in paragraphs 1 through 41 of this complaint.

12 43. At all times relevant to this action, Ohio Revised Code § 4112.0254 has provided
13 that persons with physical disabilities are not to be discriminated against because of physical
14 handicap or disability. This section provides that:
15

16 It shall be an unlawful discriminatory practice:

17 (G) For any proprietor or any employee, keeper, or manager of a place of
18 public accommodation to deny to any person, except for reasons
19 applicable alike to all persons regardless of race, color, religion, sex,
20 military status, national origin, disability, age, or ancestry, the full
21 enjoyment of the accommodations, advantages, facilities, or privileges of
22 the place of public accommodation.

23 44. CROWNE PLAZA hotel is a "place of public accommodation" pursuant to Ohio Revised
24 Code § 4112.01(A)(9).

25 45. Defendant committed an unlawful act pursuant to Ohio Revised Code §4112.02(G) by
26 denying plaintiff the full enjoyment of its accommodations, advantages, facilities, or privileges,
27 whereas, plaintiff had great difficulty due to extensive barriers for patrons confined to
28 wheelchairs.

1 46. Pursuant to Ohio Revised Code § 4112.99, plaintiff is entitled to compensatory
2 and punitive damages, and attorney fees and costs, in an amount to be determined at trial, but in
3 any event not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to
4 allow full and equal enjoyment of its goods, services, facilities, privileges, and advantages to
5 disabled persons.
6

7 47. A separate act in violation of Ohio Revised Code § 4112.02(G) has been committed each
8 day that Defendant acts or fail to act and/or knowingly and willfully fails and refuse to remove
9 each architectural barrier or policy and procedure barrier presently existing at the subject public
10 accommodation which denies full and equal access for persons with physical disabilities to said
11 building(s), elements and facilities of CROWNE PLAZA hotel. Plaintiff has been denied full and
12 equal access on an ongoing basis since the date of his first visit. As a legal result, plaintiff is
13 entitled to seek appropriate relief, such as damages, pursuant to Ohio Revised Code § 4112.99.
14

15 48. On or about March 25, 2019 through March 26, 2019, plaintiff suffered violations of
16 Ohio Revised Code §4112.02(G) in that he was denied access to the facilities as stated herein at
17 CROWNE PLAZA hotel and on the basis that he was a person with physical disabilities.
18

19 49. As a result of the denial of equal access to Defendant's facility due to the acts
20 and omissions of Defendant in owning, operating and maintaining the subject public facility,
21 plaintiff suffered violations of his civil rights, as well as suffering from shame, humiliation,
22 embarrassment, frustration, anger, chagrin, disappointment and worry, all of which are
23 expectedly and naturally associated with a denial of access to a person with physical disabilities,
24 all to plaintiff's damages as hereinafter stated.
25

26 50. Plaintiff has been damaged by Defendant's wrongful conduct and seeks the relief
27 that is afforded by Ohio Revised Code § 4112 for violation of his rights, including statutory
28

1 damages according to proof.

2 51. As a result of Defendant's acts and omissions in this regard, plaintiff has been
3 required to incur legal expenses and hire attorneys in order to enforce his rights and
4 enforce the provisions of the law protecting access for persons with physical disabilities and
5 prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions
6 of Ohio Revised Code § 4112, plaintiff therefore will seek recovery in this lawsuit for all
7 reasonable attorneys' fees and costs incurred if deemed the prevailing party.
8

9 Wherefore, plaintiff prays for relief and damages as hereinafter stated.

10 **III. THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
11 **IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.***

12 52. Plaintiff repleads and incorporate by reference as if fully set forth again herein,
13 the allegations contained in paragraphs 1 through 51 of this complaint.
14

15 53. Ohio Administrative Code (hereinafter "O.A.C.") § 4101:1-11 controls the design and
16 construction of facilities for accessibility for individuals with disabilities.

17 54. Sites, buildings, structures, facilities, elements and spaces, temporary or
18 permanent, shall be accessible to individuals with disabilities. O.A.C. § 1103.1.
19

20 55. CROWNE PLAZA hotel, being a site, building, structure, facility, element or
21 space, committed an unlawful act pursuant to O.A.C. § 1103.1 by failing to provide an accessible
22 hotel to individuals with disabilities due to the barriers to access as described in this Complaint.

23 56. Defendant's violations denied plaintiff his full enjoyment of its accommodations,
24 advantages, facilities, or privileges, whereas, plaintiff had great difficulty utilizing the property
25 due to extensive barriers for patrons confined to wheelchairs.
26

27 57. As a result of these violations, plaintiff is entitled to compensatory and punitive
28 damages, and attorney fees and costs, in an amount to be determined at trial, but in any event
COMPLAINT FOR INJUNCTIVE RELIEF AND DAMAGES - 20

1 not less than \$25,000.00, as well as issuance of an injunction requiring Defendant to allow full
2 and equal enjoyment of its goods, services, facilities, privileges, and advantages to disabled
3 persons.

4
5 58. As a result of Defendant's accessibility violations, plaintiff suffered violations of his
6 civil rights, as well as suffering from injury, shame, humiliation, embarrassment, frustration,
7 anger, chagrin, disappointment and worry, all of which are expectedly and naturally associated
8 with a denial of access to a person with physical disabilities, all to plaintiffs' damages as
9 hereinafter stated.

10
11 59. Plaintiff has been damaged by Defendant's wrongful conduct and seek relief
12 for violation of the O.A.C., including actual and special damages, according to proof.

13 60. As a result of Defendant's acts and omissions in this regard, plaintiff has been
14 required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and
15 enforce the provisions of the law protecting access for persons with physical disabilities and
16 prohibiting discrimination against persons with physical disabilities. Plaintiff therefore will seek
17 recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the
18 prevailing party.

19
20 Wherefore, plaintiffs pray for relief and damages as hereinafter stated.

21 **O.R.C. 4112.16 NOTICE OF VIOLATION OF ACCESSIBILITY LAW**

22
23 61. Pursuant to O.R.C. 4112.16 Notice of Violation of Accessibility Law, prior to
24 filing a civil action alleging violation of State of Ohio accessibility law, the alleged aggrieved
25 party may notify the owner, agent, or other responsible party, by personal service or by certified
26 mail, of alleged accessibility law violations.

27 62. On May 12, 2020, NEAL served upon Defendant's statutory agent a Notice of
28

1 Violation of Accessibility Law pursuant to O.R.C. 4112.16.

2 63. Defendant's statutory response deadline in which to serve NEAL with its
3 response was June 3, 2020.

4 64. Defendant failed to serve a response upon NEAL or his counsel within 15 days of
5 receiving the O.R.C. 4112.16 Notice.

6 65. Due to Defendant's failure to respond in accordance with the statute, NEAL
7 may commence his lawsuit for violations of State of Ohio accessibility laws.

8 66. Due to Defendant's failure to respond in accordance with the statute, NEAL, if
9 deemed the prevailing party, shall recover reasonable attorney's fees, in addition to any other
10 remedies available to the plaintiff.
11

12 Wherefore, Plaintiff SPENCER NEAL prays for relief and damages as hereinafter
13 stated.
14

15 **PRAYER:**

16 Wherefore, Plaintiff SPENCER NEAL prays that this court grant relief and damages as
17 follows:
18

19 **I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A**
20 **PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH**
21 **DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, et seq.)**

22 1. For injunctive relief, compelling Defendant to make CROWNE PLAZA hotel,
23 readily accessible to and usable by individuals with disabilities; and to make reasonable
24 modifications in policies, practice, eligibility criteria and procedures so as to afford full access to
25 the goods, services, facilities, privileges, advantages and accommodations being offered.

26 2. For attorneys' fees, litigation expenses and costs of suit, if plaintiff is deemed
27 the prevailing party; and
28

3. For such other and further relief as the court may deem proper.

I. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF OHIO REVISED CODE § 4112.02, *et seq.*

4. For injunctive relief, compelling Defendant to make CROWNE PLAZA hotel, readily accessible to and usable by individuals with disabilities, per state law.

5. General and compensatory damages according to proof;

6. All damages for each day, from the inception of the filing of this complaint, on which Defendant have failed to remove barriers which denied plaintiff and other persons with disabilities full and equal access.

7. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed the prevailing party;

8. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

9. For all costs of suit;

10. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

11. Such other and further relief as the court may deem just and proper.

III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF OHIO ADMINISTRATIVE CODE § 4101:1-11, *et seq.*

12. For injunctive relief, compelling Defendant to make CROWNE PLAZA hotel readily accessible to and usable by individuals with disabilities, per state law.

13. General and compensatory damages according to proof;

14. All damages for each day, from the inception of the filing of this complaint, on which Defendant have failed to remove barriers which denied plaintiffs and other persons with disabilities full and equal access.

1 15. Attorneys' fees pursuant to Ohio Revised Code § 4112.99, if plaintiff is deemed
2 the prevailing party;

3 16. Punitive damages, pursuant to Ohio Revised Code § 2315.21;

4 17. For all costs of suit;

5 18. Prejudgment interest pursuant to Ohio Revised Code 1343.03(A);

6 19. Such other and further relief as the court may deem just and proper.
7

8 Respectfully submitted,

9 BLAKEMORE, MEEKER & BOWLER CO., L.P.A.

10 /s/ COLIN G. MEEKER

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